

**STATE OF MINNESOTA  
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**In The Matter of  
the City of Hutchinson  
(Hutchinson Utilities Commission)  
Natural Gas Pipeline Project**

**FINDINGS OF FACT,  
CONCLUSIONS AND ORDER  
REINSTATING PERMIT  
AND REVOKING  
SUSPENSION ORDER**

The above-entitled matter came before the Minnesota Environmental Quality Board at a regular monthly meeting on February 19, 2004.

**STATEMENT OF ISSUE**

The issue before the Board is whether to revoke its Order of December 18, 2003, suspending the Amended Pipeline Routing Permit for Natural Gas Pipeline (Permit) the EQB issued to the City of Hutchinson (Hutchinson Utilities Commission) (hereinafter City) on March 20, 2003, and reinstate the Permit.

Based upon the information in the record and files of the EQB, the EQB makes the following Findings of Fact, Conclusions and Order:

**FINDINGS OF FACT**

1. On December 18, 2003, the Environmental Quality Board adopted an Order suspending the Amended Pipeline Routing Permit for Natural Gas Pipeline the EQB issued to the City of Hutchinson (Hutchinson Utilities Commission) in March 2003.
2. The Board set out three conditions that the City must meet in order to reinstate the permit. The three conditions are: (1) the City had to commit to pay for future crop loss along the entire pipeline, (2) the City had to provide certain documents and information requested by the staff, and (3) the City had to pay the EQB's fees for work on this project.

3. At the time the Board suspended the Order the pipeline was filled with natural gas but gas was not being transported to the City's customers. The City maintains that construction of the pipeline was complete as of December 10 or 11 because the pipeline was filled with gas and any additional work required to actually deliver the gas to the City's customers was outside the Permit and outside the jurisdiction of the EQB.
4. From December 19, 2003, and continuing through at least December 22, 2003, the City worked on Town Border Station No. 2 within the city limits to install valves and other devices that were necessary to allow gas to flow into the City's distribution system. Beginning on or about January 7, 2004, and continuing today, natural gas is flowing through the pipeline and being distributed to the City's residential customers.
5. On January 15, 2004, the City appeared before the Board and requested that the Board immediately rescind its suspension of the Permit. The Board took no action. On January 16, the City filed an appeal with the Minnesota Court of Appeals of the Board's decision of December 18 to suspend the Permit.
6. On February 6, 2004, the City wrote to the EQB and requested that the Board withdraw its order of suspension. The City wrote again on February 12 requesting that the suspension order be withdrawn and stating that if the Board rescinded its order, the appeal would be moot and the City would enter into a stipulation of dismissal with the EQB.
7. On February 19, 2004, the City executed a voluntary stipulation of dismissal pursuant to Minnesota Rules of Civil Appellate Procedure 142.01. Under the rule, the dismissal takes effect when executed by both parties and approved by the Court of Appeals.
8. The EQB maintains that it has authority to issue an Order suspending a pipeline routing permit under Minnesota Statutes chapter 116I and Minnesota Rules part 4415.0205. The City maintains that the EQB does not have such authority.
9. Both the City and the EQB recognize that both parties preserve all legal arguments in the event new litigation becomes necessary to resolve the differences between the parties.
10. On January 15, 2004, after the Board meeting, the City provided the EQB with copies of agreements the City entered into with about 25 landowners regarding the method of topsoil separation. The City has represented that these are the only documents in the City's possession that fall within the categories of documents requested.

11. On February 12, the City wrote to the EQB and stated that it had obtained certain documents from Terry Bovee, Steve Lawler, Jomax Construction Co, and Natural Gas Consulting.
12. On February 13, 2004, the EQB received a letter from the City dated February 12 informing the EQB that the City would provide access to certain documents in its possession that the EQB had requested. The City informed the EQB that it did not have certain other documents in its possession and that other documents would not be provided. The EQB has asked the City to provide copies of the documents it has in its possession and that the City is prepared to provide.
13. The City has also provided the EQB with letters and other documents from county inspectors in the counties where the pipeline is located. The county inspectors all express satisfaction with the manner in which the pipeline was constructed and state that Hutchinson complied with the requirements of the Agricultural Impact Mitigation Plan incorporated into the Permit.
14. To date the EQB has incurred expenses in excess of \$20,000 for work regarding the Hutchinson pipeline. The City has not paid these past expenses. Additional expenses will be incurred by the EQB in the upcoming months as the staff continues to investigate this matter and attempt to bring it to a final resolution.
15. The Sib-Ren FAIR organization has objected to reinstatement of the permit.
16. On December 18, the Board also passed a resolution directing the City of Hutchinson to inform the EQB about the City's intentions with regard to a tap on the line to connect to another pipeline running east-west between the cities of Fairfax and Winthrop. The City of Hutchinson has not provided the EQB with any information in writing about its intentions regarding a tap to the Fairfax line. It is not possible to determine whether an EQB permit or information book is required for such a pipeline until specific information about the pipeline is provided.
17. Also on December 18, the Board passed a resolution authorizing the Chair to commence litigation against the City at any time the Chair determined that litigation was appropriate.
18. Neither the resolution regarding the Fairfax tap nor the resolution authorizing the Chair to commence litigation is affected by the action to reinstate the Permit and both of these resolutions remain in effect.

Based on the Findings of Fact, the Environmental Quality Board hereby makes the following

### **CONCLUSIONS**

1. Gas is flowing in the pipeline and gas is being supplied on a daily basis to the City's residential customers.
2. The EQB and the City will incur substantial expenses if the City's appeal of the Suspension Order goes forward. These expenses will be avoided if the appeal is dismissed.
3. The City has signed a voluntary stipulation of dismissal of the City's appeal of the Suspension Order pursuant to Minnesota Rules of Civil Appellate Procedure 142.01. The Court of Appeals must approve the dismissal.
4. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

Based on the Findings of Fact and the Conclusions contained herein and on the entire record regarding the Hutchinson Pipeline Project, the Minnesota Environmental Quality Board hereby issues the following

### **ORDER**

The Environmental Quality Board's Order of December 18, 2003, suspending the Amended Pipeline Routing Permit for Natural Gas Pipeline the EQB issued to the City of Hutchinson (Hutchinson Utilities Commission) on March 20, 2003, is hereby withdrawn and the Permit is reinstated and in full force and effect, effective when the Minnesota Court of Appeals approves the dismissal of the City's appeal of the Suspension Order.

Approved and adopted this 19th day of February 2004.

**STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD**

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**Robert A. Schroeder, Chair**